

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3424 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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NAVJIVAN TARPAULIN IND PVT LTD

Versus

STATE OF GUJARAT  
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Appearance:

MR RS SANJANWALA for Petitioner  
MR KG SHETH AGP for Respondents.  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/07/2000

ORAL JUDGEMENT

Petitioner abovenamed is a Director of a Private Limited Company. Petitioner has preferred this petition under Article 227 of the Constitution of India read with provisions contained under Bombay Land Revenue Code as well as under Bombay Tenancy & Agricultural Lands Act,

1948. The petitioner has challenged the order of Mamlatdar & A.L.T. Umargam dated 18th May, 1989 which is placed at Annexure:D to the petition under which the said authority directed that the land bearing Survey No. 132/1-2 admeasuring Acres 10 - Gunthas 20 of village Solsumba, Tal. Umargam be confiscated to the State under the provisions of Section 84 of the Bombay Tenancy & Agricultural Lands Act, 1948.

2. It appears from the record that aforesaid land was purchased by the present petitioner under registered sale deed dated 7th July, 1984 which is placed at Annexure:C on Page 22 of the petition. It can be gathered from the document at Annexure :B at Page 17 to the petition dated 26th March, 1984 that aforesaid land has been converted for N.A. purposes. This means that the land was converted from agricultural land into non-agricultural use on 26th March, 1984, and it was purchased by the petitioner on 7th July, 1984. This may make it clear that when the petitioner had purchased the land on 7th July, 1984, it was already converted from agricultural land into non-agricultural use.

3. Aforesaid order has been passed on the ground that the land is an agricultural land and it cannot be purchased by the person who is not an agriculturist in view of the provisions contained under Bombay Tenancy & Agricultural Lands Act. There is no serious dispute about the said provisions of law. However, the contention of the petitioner is that when the land was purchased by the petitioner, it had already been converted for N.A. purpose and confiscation could not be ordered against the petitioner.

4. The petitioner has further contended that so far as proceedings of Tenancy Case No.54C/7470 is concerned, the petitioner was not a party to the said proceeding, and that aforesaid order of confiscation has been passed in his absence and behind his back. Therefore, the petitioner has not been given any opportunity to meet with the situation and defend his case, and therefore, the petitioner claims that the said order is illegal being in violation of the principles of natural justice. The petitioner has, therefore, challenged aforesaid order dated 18th May, 1989 which is placed at Annexure : D on Page 27 to the petition. Therefore, by this petition, the petitioner has prayed for issuance of appropriate writ, order or direction to quash and set aside the aforesaid order dated 18th May, 1989 at Annexure : D on Page 27, and also enforcement of the notice dated 23rd March, 1991 demand possession of the said property from

the petitioner.

5. On institution of this petition, rule was issued and interim relief was granted which was continued from time to time. Though notice of rule was served upon the respondents, they have not taken any pain to file affidavit-in-reply or document in their support.

6. I have heard Mr.S.H.Sanjanwala, the learned advocate for the petitioner and Mr. K.G.Sheth, learned Assistant Government Pleader. I have also perused the papers. From the papers, it becomes clear that the petitioner had purchased the aforesaid land on 7th July, 1984, and the said land was converted for N.A. use on 26th March, 1984. This may be gathered from the averments made at Pages 22 and 17 respectively of the petition. This may make it clear that when the land was purchased by the petitioner, it was already converted for N.A. use. That therefore, the petitioner was not an agriculturist and it was not possible on the part of the petitioner to purchase said land since it was already converted for N.A.use.

7. Second point in favour of the petitioner is that before passing the aforesaid order, no notice was issued to the petitioner, and the petitioner was not given an opportunity of being heard. After all, the petitioner was in possession of the land for N.A.use, and thereafter, a factory was established. Therefore, there was substantial change made in the said land and yet the petitioner has not been heard before the order came to be passed for confiscation of the aforesaid property.

8. Learned advocate for the petitioner has vehemently contended that the State Government has every power and right to take action against the sale of the land and against the person who is not an agriculturist, and if action had been taken against the original purchaser, then the petitioner would not have purchased the said land from the said person. That the petitioner has purchased the said land only after ascertaining that it was N.A.land, and thereafter, the improvement in the land has been made by the petitioner and factory had also been established on the said land. That therefore, if the land is ordered to be confiscated to the Government at present, then the petitioner would be put to great loss and hardships.

9. In order to get support from the case law, Mr. Sanjanwala, the learned advocate for the petitioner has relied upon certain decisions. One of them is of this

court in case of Bhanabhai Morarbhai Solanki Vs. State of Gujarat, reported in 1994(1) GLR 822, wherein it has been laid down that initiation of proceeding under Section 84C of the Bombay Tenancy & Agricultural Lands Act, 1948 is to be made within a reasonable period, and if such proceedings are taken after five years or so, then it cannot be said to be taken within a reasonable time. This court has referred to the previous decision of this court as well as of the Supreme Court in a case of Bhagwanji Bhavanji vs. State of Gujarat, reported in 1971 GLR 156 and in case of State of Gujarat vs. Pate Raghav Natha reported in 1969 GLR 992 (SC).

10. Similar view was adopted in Mansukhbhai Lallubhai Patel Vs. State of Gujarat and Another, reported in 1994(2) GLH (UJ) 9, wherein it has been laid down that proceedings initiated under Section 84C of the aforesaid Act would be invalid, if initiated after long lapse of time.

11. In the present case, we find that the order of confiscation has been passed in the matter in which the petitioner was not a party. No notice was issued to the petitioner before passing the aforesaid order of confiscation of the land in question. At present the land in question is in possession of the present petitioner. It was already N.A. use land at the time when the petitioner purchased the same, and the factory has been established on the said land. No opportunity has been afforded to the petitioner to defend his case. Therefore, the orders have been passed clearly in violation of principles of natural justice, and therefore, such order cannot be sustained. Even the aforesaid decisions clearly support the case of the present petitioner.

12. In aforesaid view of the matter, it is very clear that the aforesaid order has been passed in violation of principles of natural justice, and therefore, it is required to be quashed and set aside. Result is that the petition of the present petitioner succeeds and it is required to be allowed. This petition is, therefore, accordingly allowed. The order passed by the second respondent dated 18th May, 1989 placed at Annexure:D to the petition is ordered to be quashed and set aside, and the respondents are prevented from implementing and enforcing the order dated 18th May, 1989 as well as notice of demand dated 23rd March, 1991. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Date: 7/7/2000. (D.P.BUCH, J.)

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